***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+ WRIT PETITION No.19733 of 1997

%Dated 05.04.2007

D. Appa Rao S/o D. Purnaiah,
Aged 75 years, R/o. H.No.10-2-289,
Shanthinagar, Hyderabad.

… Petitioner.

VERSUS

$ The Special Officer and Competent Authority,
Urban Land Ceiling Authority, Hyderabad and another.

… Respondents.

! Counsel for Petitioner: Sri R.Raghunandan Rao

^Counsel for Respondents: Government Pleader for Revenue
(Urban Land Ceiling)

<GIST:

>HEAD NOTE:

? Cases referred

1. 2002(2) ALD 48(sc)
2. 1992(2) ALT 473

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No. 19733_of 1997

Dated : 05.04.2007

Between:

D.Appa Rao S/.o Sri Purnaiah

… **PETITIONER**

And:

The Special Officer and Competent Authority,
Urban Land Ceiling Authority, Hyderabad,
and another.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No. 19733_of 1997

ORDER:

The petitioner herein seeks a declaration that the gazette notification published at pages 892 and 893 of Andhra Pradesh Gazette Notification No.25, dated 19.06.1997 and notice issued under sub-section 5 of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"), are illegal, void and violative of G.O.Ms.No.733 dated 31.10.1988 issued by the Government.

It is the case of the petitioner that he owned agricultural land admeasuring Ac.1.00 in Sagbowli village and also 700 square yards of land in Shanthinagar, Hyderabad, on which he had constructed a house bearing H.No.10-2-289/77. After the Act came into effect, the

petitioner filed a statement in Form No.1 under Section 6(1) of the Act, furnishing the details and extent of the land he owned. Subsequently, the Government issued G.O.Ms.No.136, Revenue, dated 28.01.1981, formulating a scheme under the Act that the owners, who had excess land than the ceiling limit can sell the land to any housing society, which would provide house sites to the weaker sections of the society. Based on the said Government Order, the petitioner had entered into an agreement of sale with one M/s Sridevi Cooperative Housing Society Limited for sale of his land in the year 1982. Meanwhile, the Government of A.P., issued G.O.Ms.No.964 dated 27.06.1983 denying the benefits given to the cooperative societies under G.O.Ms.No.136 dated 28.01.1981. The said G.O.Ms.No.964 was questioned in this Court, and later in the Supreme Court, by the aggrieved. The petitioner also stated to have made an application to the Government seeking exemption of the land situated at Sagbowli village from the provisions of the Act, but no action had been taken. Subsequently, in the year 1985, the Special Officer under the Act issued a statement under Section 8(1) of the Act and called for objections from the petitioner. Accordingly, the petitioner filed objections bringing all the facts to the notice of the first respondent. After considering the objections, the first respondent passed an order under section 8(4) of the Act on 23.04.1985 determining that the petitioner had no vacant land at Shanthinagar and that the entire land admeasuring Ac.1.00 situated at Sagbowli is vacant.

Subsequently, the Government of Andhra Pradesh issued G.O.Ms.No.733 dated 31.10.1988 whereby an extent of Acs.5.00 of vacant land held by any person in peripheral areas is exempted from the provisions of the Act. On the basis of the said Government Order, the petitioner claims that he has no excess land as the land possessed by him at Sagbowli is only an extent of Ac.1.00 and it is in the peripheral area and as such it is exempted. Subsequently, on the

basis of G.O.Ms.No.733 dated 31.10.1988, the petitioner alienated his land at Sagbowli to various members of M/s Sridevi Cooperative Housing Society Limited in the year 1990.

However, on 31.07.1997, the petitioner was served with a notice under Section 10(5) of the Act informing him that the land possessed by him at Sagbowli had vested in the State Government with effect from 16.06.1997 by virtue of gazette publication dated 19.06.1997. Questioning the same, this writ petition is filed.

A counter is filed on behalf of the respondents. It is stated in the counter that petitioner filed a statement in Form No.1 under Section 6(1) of the Act in respect of 4000 square meters in Plot No.7 in Sy.No.1 of Sagbowli village. After due enquiry under Section 8(1) of the Act, an order was passed on 28.01.1985 determining the petitioner as surplus vacant land holder to an extent of 3,585.29 square meters in the said survey number, and the said order was communicated to the petitioner on 04.02.1985. In response to the same, the petitioner filed objections on 20.02.1985 stating that he had entered into an agreement with one M/s Sridevi Cooperative Housing Society Limited on 26.01.1982 for sale of the said land and the matter is pending in the Supreme Court regarding the validity of G.O.Ms.No.964 dated 27.06.1983. Subsequently, the case was posted for personal hearing on 16.04.1985 and the petitioner appeared and reiterated the contents in the objections, but he has stated that he has no objection for acquiring the land to the extent determined as surplus. Thereafter, considering the material on record, final order under Section 8(4) of the Act was passed and statement under
Section 9 of the Act has been issued on 23.04.1985 determining an extent of 3,585.29 square meters as excess vacant land possessed by the petitioner than the ceiling limit. Subsequently, the petitioner made an application to the Government seeking exemption, and the Government, by Memo dated 15.03.1985 called for the report from the

Commissioner of Land Reforms and Urban Land Ceiling, Hyderabad. Accordingly, the Commissioner submitted a report on 13.03.1992 stating that the exemption proposals for the land in question is covered by exemption under G.O.Ms.No.733 dated 31.10.1988.

It is further stated in the counter that G.O.Ms.No.733 has no application to the present case as the said Government Order was issued subsequent to the passing of final order in this case, and that the said Government Order has no retrospective effect. It is also stated that at the time of enquiry the petitioner had no objection for acquiring the extent determined as surplus, and in fact he was allowed to hold 1000 square meters of land including an extent of 585.29 square meters out of the extent determined as surplus. Therefore, he cannot avail the benefit under G.O.Ms.No.733 dated 31.10.1988 and the writ petition is liable to be dismissed.

Heard the counsel for the petitioner and the learned Government Pleader for Revenue (Urban Land Ceiling).

Learned counsel for the petitioner submits that though final determination under Section 8(4) of the Act was made, when once the land is exempted by a reason of G.O.Ms.No.733 dated 31.10.1988 as clarified in G.O.Ms.No.209 dated 01.06.1989, the land situated in peripheral area of urban agglomeration stands exempted from the provisions of the Act, and therefore, the land cannot be treated as urban vacant attracting the provisions of the Act. He placed strong reliance on the decision of the Supreme Court in ***Special Officer and Competent Authority, Urban Land Ceilings v P.S.Rao***[1] and also the decision of this Court in ***Nalla Yakoob v The Govt. of A.P.***[2].

The learned Government Pleader for Revenue (Urban Land Ceiling) submits that the petitioner cannot avail the benefit under G.O.Ms.No.733 as the proceedings in this case were initiated much

earlier to the issuance of the said Government Order, and therefore, the writ petition is liable to be dismissed.

Admittedly, pursuant to the statement filed by the petitioner under Section 6(1) of the Act, enquiry was conducted and provisional orders under Section 8(1) of the Act and also notice under Section 8(3) of the Act were issued to the petitioner on 28.01.1985 determining the surplus vacant land held by him as 3,585.29 square meters. Pursuant to which the petitioner filed objections on 20.02.1985 and after enquiry, the competent authority passed final orders under Section 8(4) of the Act and also issued final statement under Section 9 of the Act on 23.04.1985 determining the said extent of excess vacant land held by the petitioner herein. Meanwhile, the petitioner sought exemption from the Government under Section 20(1)(b) of the Act. Pending consideration of the said application, the Government of Andhra Pradesh issued G.O.Ms.No.733 dated 31.10.1988, and accordingly, after due enquiry, the Commissioner of Land Reforms and Urban Land Ceiling submitted a report to the Government on 13.03.1992 stating that the exemption proposal in respect of the land of the petitioner is also covered by G.O.Ms.No.733 dated 31.10.1988. Subsequently, notification under Section 10(3) of the Act was published and notice under Section 10(5) of the Act was issued to the petitioner on 23.07.1997.

The main contention of the learned Government Pleader appearing for the respondents is that the petitioner cannot take shelter under G.O.Ms.No.733, as the final order under Section 8(4) of the Act was passed on 23.04.1985, whereas the said Government Order was issued on 31.10.1988.

G.O.Ms.No.733 dated 31.10.1988 was issued in exercise of powers under Section 20 of the Act. Section 20 of the Act deals with the power of the Government to exempt the vacant land possessed by

the owner than the ceiling limit. According to Clause (a) of sub-section (1) of Section 20 of the Act, the State Government may grant exemption if it is satisfied, having regard to the relevant factors specified in the clause that it is necessary or expedient to grant the exemption in the "public interest" subject to the conditions specified in the order. Clause (a) specifies certain relevant factors for the purpose of grant of exemption, namely, "location of such land", "the purpose for which such land is being or is proposed to be used" and such other relevant factors as the circumstances of the case may require. Apart from the location of the excess vacant land and the purpose of its use, regard must be had to the other relevant factors, which is a question of fact in each case. However, these factors must indicate that the grant of exemption under Clause (a) is necessary or expedient in the "public interest." The expression "public interest" has a legal connotation. The broad guidelines for grant of exemption under Clause (a) are enacted in the provision. A safeguard is provided by requiring conditions to be specified in the order to which the exemption is granted under Clause (a). Even though there is no proviso in Clause (a) of the kind enacted thereafter in Clause (b), yet the absence of such a proviso is inconsequential since the requirement of the expressly enacted proviso in Clause (b) is implicit in the manner of exercise of the power under Clause (a). The requirement in Clause (a) of making an order having regard to the specified relevant circumstances and specifying conditions attached to the exemption, ensures that the decision is reached for cogent reasons which are placed on record in writing culminating in the making of the written order. There is no scope for the view that exemption can be granted under Clause (a) by an order specifying the conditions having regard to the specified relevant factors without recording the reasons for doing so in writing. Every State action must satisfy the rule of non-arbitrariness and, therefore, recording of reasons in writing for granting the exemption under Clause (a) indicating that it is necessary or expedient in the public

interest so to do, is an essential requirement of valid exercise of power under Clause (a).

In the instant case, the petitioner entered into an agreement of sale with the housing society, and the main object of the said society is to provide house sites to the weaker sections of society. Therefore, it is a public interest within the meaning of clause (a) of sub-Section (1) of Section 20 of the Act, and on the application filed by the petitioner seeking exemption, the Government also, by its order dated 13.03.1992, held that the petitioner's case falls within the purview of G.O.Ms.No.733 dated 31.10.1988.

According to paragraph 6(a) of G.O.Ms.No.733, the vacant land or agricultural land which is likely to be used for non-agricultural purposes is exempted to a maximum extent of five acres i.e, 10,000 square meters situated within the peripheral areas specified in column (3) of

schedule I of the Act. So, the case of the petitioner definitely falls within the scope of the said Government Order, as the excess land he holds is only 3,585.29 square meters. In support of his contentions, the learned counsel for the petitioner places reliance on ***Nalla Yakoob's case***

(2 supra). In the said case, application for exemption was made by the petitioner therein during the year 1983 when G.O.Ms.No.733 was not in existence, and the learned Single Judge held that in view of the issuance of the general exemption contained in G.O.Ms.No.733, dated 31.10.1988, no permission for exemption is necessary as the land stands exempted automatically under the said G.O, provided the land is within the agglomeration area or peripheral area, and the maximum extent of the land is five acres. The facts in the said case are similar to this writ petition. In the instant case also the petitioner filed application seeking exemption earlier to the said Government Order came to be issued, and the total extent of excess land, even according to the

respondents, is 3,589.29 square meters, much below the specified maximum extent qualified for exemption. Though the respondents contended that the petitioner cannot take shelter under the said Government Order, admittedly, the application of the petitioner was disposed of after the Government Order came into existence observing that the exemption sought by the petitioner is covered under G.O.Ms.No.733. Under Section 10(3) of the Act, the petitioner continues to be the owner of the said land till the notification is issued, and therefore, the petitioner is the holder of the land as on the date of issue of the said Government Order. Therefore, the contention of the respondents that the petitioner cannot avail the benefit under G.O.Ms.No.733 merits no consideration.

For the foregoing reasons, this Court is of the view that the land of the petitioner automatically gets exempted as per G.O.Ms.No.733 dated 31.10.1988, and therefore, the gazette publication issued by the respondents as well as the notice issued under Section 10(5) of the Act cannot be sustained.

Accordingly, the writ petition is allowed setting aside the gazette notification published at pages 892 and 893 of Andhra Pradesh Gazette Notification No.25, dated 19.06.1997, so far as the acquisition of land of the petitioner herein is concerned, and also the notice issued to the petitioner under Section 10(5) of the Act. There shall be no order as to costs.

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05.04.2007

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Note:
L.R. Copy to be marked.

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[1] 2002(2) ALD 48(sc)

[2] 1992(2) ALT 473